IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

(1) **Dharmendra Kataria vs. Ganganagar Sugar Mills Ltd., Sri Ganganagar.**
(D.B.Civil Special Appeal No.74/96)

(1) **Dharmendra Kataria vs. Ganganagar Sugar Mills Ltd., Sri Ganganagar.**
(D.B.Civil Writ Petition No.610/89)

Date of Judgment :- 22nd December, 2006.

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr. M.Mridul, Senior Advocate for the appellant.
Mr. Manish Shishodia, Advocate for the respondent.
Mr. Vijay Agarwal, Advocate for the respondent.

BY THE COURT :-(PER HON'BLE MR.MOHAMMAD RAFIQ,J)

REPORTABLE

Aforementioned special appeal and the writ petition have been filed at the instance of one common appellant/petitioner (hereinafter referred to as the appellant) who was removed from service by the respondent Ganganagar Sugar Mills Ltd., Sri Ganganagar (for short "the respondent")vide order dated 21/26.09.1981. The special appeal has been filed against the judgment dated 27th November, 1995 by which the writ petition of the respondent against the order passed by the Prescribed Authority

u/s 28-A of the Rajasthan Shops and Commercial Establishments Act, 1958(for short "the Act of 1958") declaring removal of the appellant as illegal and directing his reinstatement was allowed. The appellant has also additionally filed the aforesaid writ petition by way of abundant caution challenging the order of his removal dated 21/26.9.1981 directly before this Court under Article 226 of the Constitution of India. Though the issues raised in the appeal and the writ petition are different but the questions of law as also the foundational facts giving rise to them are common and therefore both the matters were taken up together for hearing and are being disposed of by this common judgment.

Factual matrix of the case is that the appellant was appointed with the respondent as a general clerk in their Accounts Section vide order dated 18th August, 1973. He was posted as Incharge, Liquor shop, Station Road, Jaipur. Besides the appellant, two salesmen, two helpers and one Chowkidar and one person from vigilance cell were also posted there. The appellant, two salesmen and their helpers and Chowkidar were responsible for the sales counter. Appellant's duty was confined to checking the liquor bottles received from the distillery and entering details thereof in the records. He used to also supervise the shop and count total money

received at the end of the day and deposit the same with the cashier on the following day. In the day time however the sale proceeds would remain in the charge of the salesman on duty. The then Incharge of the Vigilance Department of the respondent Shri S.N.Bhargava checked the shop at Jaipur on various dates including on 10.12.1978 when he found the cash short by Rs.92.66 paisa. He again checked the shop on 8.1.1979 and found the quality strength of the three half bottles and two quarter bottles of liquor reduced from 54.4 to 54.8 on account of mixing of the water. The shop was further checked on 7.2.1979 and this time again on testing one bottle of "Keshar Kisturi"(liquor) its strength was found 35.2 instead of 5 U.P. Again when the checking was made on 14.2.1979, one bottle was found of lesser standard as its strength was 65.2 instead of 45 U.P. Checking was again made on 21st April, 1979 when three half bottles were found to be adulterated with water and their strength varied between 60.6 and 60.9 in stead of 45 U.P. Checking was again made on 26th April, 1979 and this time again shortage of Rs.458.58 was detected. According to the appellant, when the shop was checked on 10.12.1978, he was not present at the shop because he had gone for lunch. But his signature was obtained on the inspection memo when he returned from lunch. During the checking made on 26th April, 1979, shortage of Rs.458.38 paisa was

detected. A memorandum to that effect was prepared in which it was recorded that besides the appellant, one Ashok Harjani was also present and that the incharge of the shop informed that the currency notes of Rs.300/- were sent for being replaced to the bank. The appellant was served with the charge sheet on 1st June, 1979 and was also placed under suspension. He submitted his reply to the charge sheet on 11th June, 1979. He was served with another charge sheet on 2nd June, 1980. One Shri U.N. Mathur was appointed as enquiry officer to conduct the inquiry. While the management examined three witnesses in support of their case namely S/Shri K.N.Aswa, M.L.Dabi and Roop Dan, the appellant examined himself and one Shri Ramchandra. The enquiry officer submitted his report sometime in the month of July, 1981. A show cause notice was issued to the appellant on 3/11th August, 1981 proposing penalty of removal and requiring him to submit his defence. The Disciplinary Authority finally vide order dated 26th September, 1981 imposed the penalty of removal upon the appellant.

The appellant initially approached the Prescribed Authority u/s 28-A of the Act. A preliminary objection was taken by the respondent with regard to the maintainability of the said application before the Prescribed Authority . When this was not

accepted, the respondent filed a writ petition before this Court being S.B.Civil Writ Petition No. 1411/82 which was allowed on 6th August, 1982 and a direction was issued to the authority to decide the question of jurisdiction first soon after taking evidence of both the parties. However, the respondent did not adduce any evidence even after remand and the Prescribed Autyhority rejected its preliminary objection vide its order dated 2nd May, 1983. The Prescribed Authority allowed the application vide its order dated 30.6.1984 and directed reinstatement of the appellant with full back wages. The respondent then challenged the aforesaid order of the Prescribed Authority in S.B.Civil Writ Petition No. 2066/84 on the ground that no opportunity to lead evidence was granted to them. The writ petition was allowed on that premise and the matter was remanded back to the Presiding Authority with opportunity being granted to the respondent to lead evidence. The respondent thereafter examined as many as 5 witnesses and the evidence of the respondent was then closed. Against this order, the respondent filed S.B.Civil Writ Petition No. 2933/87 before this Court complaining that the evidence was wrongly closed. This time however their writ petition was dismissed by judgment dated 10.12.1987. The Authority by its order dated 17.2.1988 allowed the application of the appellant which order was challenged in S.B.Civil Writ Petition No.

1709/88. It was this writ petition which was eventually allowed vide judgment dated 27.11.1995 against which the present special appeal has been filed.

The writ petition of the appellant was allowed by the learned Single Judge on the premise that the respondent being a government company was exempt from the purview of the said enactment by virtue of Section 3 of the Act of 1958. In taking such a view, the learned Single Judge based his judgment on the pronouncement made by the Hon'ble Supreme Court in C.V. Raman etc. vs. Management of Bank of India, 1988 S.C. 1369 wherein their Lordships while interpreting analogous provisions from another State held that a government company would be exempt from the purview of the Act. Additionally however the learned Single Judge also held that the provisions of the Act of 1958 are not applicable to the cases where the employees concerned are governed by the provisions of the Factories Act, 1948 and since the respondent was covered by the Factories Act, the provisions of the Act of 1958 would not apply to it. It is in this background that the appeal and the writ petition have been filed.

We have heard Mr.M.Mridul, learned Senior Advocate

for the appellant and Mr. Manish Shishodia and Mr. Vijay Agarwal learned counsel for the respondents and perused the record.

Mr.M.Mridul, learned Senior Advocate for the appellant argued that the learned Single Judge has erred in law in holding that the retail shop of the Ganganagar Sugar Mills Ltd. where appellant was working would be exempt from the purview of the Act of 1958. In holding so, the learned Single Judge has misconstrued the provisions of Section 3 as also Sections 2(3) and 2(17) of the Act of 1958 defining the "commercial establishment" and the "shop" respectively. According to him, the learned Single Judge has wrongly applied the ratio of the judgment of the Hon'ble Supreme Court in C.V. Raman (supra). He submit that basic question was whether "shop"as defined u/s 2(17) of the Act of 1958 stands exempted from the Act whereas the entire question has been examined by the learned Single Judge from the point of view whether a "commercial establishment" would be exempt from the purview of the said Act. The fact however is that "commercial establishment" is separately defined in Section 2(3) of the Act which carries a different meaning than the definition of "shop" as given in Section 2(17) of the Act. Moreover the provisions of the Tamilnadu Shop and Establishment Act which were under consideration before their Lordships in

C.V.Raman supra were entirely different than the aforesaid provisions under the Act of 1958. So far as Section 2(7) is concerned, it only defines "establishment" and all that it provides is that establishment includes "commercial establishment". However the word "shop" stands separately defined in Section 2(17) of the Act which stands independently by itself. A perusal of the definition of "shop" would reveal that later part of it also speaks of a "commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948". Mr. M.Mrdiul, learned Senior Advocate argued that the very fact that before the word "commercial establishment", word "a" has been used, makes it abundantly clear that not all the commercial establishments stand excluded from the purview of Section 2(17) of the Act. If that extended meaning were to be given to the definition of "shop", the Act and the provisions contained therein would become totally non-operative altogether. Exclusion has been made only of such "commercial establishment" or a "shop" which is attached to a factory and where the persons employed in the shop are allowed benefits provided for the workers under the Factories Act . In further developing his argument, Mr. Mridul referred to Section 3 of the Act which contains the provisions relating to exemption . According to

him, clause (a) and (b) of sub-section (1) of Section 3 of the Act refers to establishment or administrative service in which persons employed are mainly engaged in office work and offices of the government and of Reserve Bank of India. Clause (c) of sub-section(1) of Section 3 refers to only those establishments which are in respect of 'the "treatment or the care of the infirm, or the mentally unfit". Exemption is therefore not available to all the government ventures of commercial establishment but only to limited one. He argued that Section 3 supra is the only provision relating to exemption. In the case of administrative services however persons engaged are mostly required to work in office of the Central Government or any State Government or local uathorities referred to in clauses (a) and (b) of Section 3(1) of the Act. Clause (c) of Section 3(1) refers to word "establishment". The learned Single Judge therefore committed an error in holding that the order passed by the Prescribed Authority under the Act of 1958 was without jurisdiction.

While referring to the findings arrived at in para 12 of the impugned judgment, Mr. Marudhar Mridul argued that the learned Single Judge was not correct when he held that the provisions of the Act would not be applicable to the cases where the

employees concerned are governed by the Factories Act, 1948 and further that it was undisputed that the respondent mill was covered by the provisions of the Factories Act, 1948. This finding was palpably wrong because the pleadings in the writ petition out of which the present appeal arise would go to show that the main contention of the respondent mill was that it being an undertaking of the Rajasthan Government , it was a State within the meaning of Article 12 of the Constitution of India and therefore was exempt from the operation of the Act. It was nowhere pleaded that the shop at Jaipur was attached to the factory of the respondent mill. All that was pleaded was that the respondent mill was not governed by the Act of 1958 since it was a factory governed by the Factories Act which have all been exempted from the operation of the Act because workers employed there are entitled to get all benefits under the Industrial Laws and further that since there are certified standing orders governing their service conditions, the appellant should have approached the Industrial Tribunal/Labour Court for redressal of his grievances and not the Prescribed Authority under the Act. Mr. Mridual, leaned Senior Advocate therefore argued that this plea is far from being a contention that the shop was attached to the factory and therefore the benefits under the Factories Act would be available to the appellant herein. It was argued that last

para of Section 2(17) defining "shop" require two conditions to be fulfilled. Firstly that the shop should be attached to a "commercial establishment" and secondly that the workman should be getting the benefits of the Factories Act. A look at the standing orders which have been placed on record at Annexure 2 makes it manifest that reference to Factories Act is limited to shifts of hours and work for various categories of workmen. The very fact that reference to Factories Act has been made in the standing orders, goes to show that the Factories Act does not ipso facto apply to the appellant herein. Had it been so, there was no reason why standing orders should have at all been made. Moreover, no such objection was raised before the Prescribed Authority under the Act of 1958 and obviously therefore no evidence on that point was adduced.

Mr.M.Mridual, learned Senior Advocate has made reference to the affidavit filed by the appellant wherein it was asserted that the appellant was not being extended benefits available to a worker u/ss. 42, 43, 45, 46 , 47, 49, 52, 54, 55, 59, 75, 78 and 79 of the Factories Act. While relying on Annexure R/2 filed alongwith the reply to the writ petition no. 610/89, the learned counsel argued that the appellant was made to work from 9 to 12 hours which was against the provisions of the Factories Act. On the

question of implication of the word "attachment" used in Section 2 (17) which defines "shop", the learned counsel argued that the word "attachment" might have many meanings but it has to be read in the context of the law under examination. What is physically hundred miles away cannot be considered to be attached to the factory. Besides, nature of activities carried out in the shop are entirely different than what was being done in the factories. Mr. Mridual has referred to the Corpus Secondum Vol.VII p.168 as to the meaning of the word "attachment" which is reproduced as under:-

> "Attachment: In a popular sense, it has been defined as meaning close adherence or affection; fidelity; regard; and passion or affection that binds a person. It has been said that it it a stronger word than "well disposed", and, in particular connection, implies depth of conviction. Used in a mechanical sense, it has been defined as meaning something attached; some adjunct attached to an instrument, machine, or other object. As technically used, signifying a seizure of property and bringing it into the custody of the Court, the word is defined and the subject matter fully treated in the title Attachment, and in Garnishment.
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> Attachment of privilege. In English Law, a process by which a man, by virtue of his privilege, calls another to litigate in that court to which he himself belongs, and who has the privilege to answer there.
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> Attachment of the forest. One of the three courts formerly held in forests. The highest court was called "justice in eyre's seat;" the middle, "the swainmote:' and the lowest, the "attachment."

He therefore argued that the judgment of the learned Single Judge having been passed on the basis of misconstruction of the provisions of the Act and misapplication of the ratio of the Supreme Court judgment in C.V.Raman supra is liable to be set aside and the appellant is entitled to reinstatement.

Arguing on writ petition no. 610/89 in which challenge has been posed to the validity of the order dated 21/26.9.1981, Mr. M.Mridul, learned counsel for the appellant submitted that occasion to go into the merits of that petition would arise only if the appeal fails. On the merits however he argued that the evidence that has come on record indicates that the shop in question was functioning at Jaipur. Apart from the fact that besides the appellant, large number of other persons were also working in the shop and the appellant was working in only supervisory capacity. He had to go out of the shop for long durations. Money used to come in the shape of notes and coins and was being received by the salesman. Shortage of amount of money on certain dates as referred to in the charge sheet cannot be linked to the appellant alone . It would be taking a very hyper technical view of the matter if one were to say that since he was overall incharge of the shop and therefore all that has happened would be attributable to him alone. It was argued that

ground realities of the life cannot be ignored in the scenario in that where large number of persons were working and that too for long periods, responsibility of all that transpired in the shop even in the absence of the appellant cannot be completely fastened on him. While referring to the nature of the charges, Mr. Mridul argued that apart from the shortage of the money on certain dates such as Rs.92.66 10.12.1978, Rs.458 on 26.4.1979, the other charges are that when the bottles of the liquor were subjected to test, liquor contained therein was found of lesser strength than the prescribed standard. In regard to these charges also, Mr. Mridul argued that when the presence of several employees is proved from the record of the case, the charges cannot be said to have been proved against the appellant alone merely because they could not be proved against some other persons. To bring home the charges against the appellant, the respondents were required to prove that it was he who all the time sold the liquor and received the money. The fact of the matter however is that sales were always effected by a salesman who used to collect the money and at the end of the day, pass it on to the incharge. If there was any handling of the cash of the sales on the mixing of water in the bottles in the course of the day, responsibility of all this was of the salesman and without there being any proof of the fact that the appellant had charged lesser amount

or had adulterated the liquor, the charges against him could not be taken to have been proved.

As regard the statement of Mr.M.L.Dabi, it has been argued that very same person has given the statement before the Prescribed Authority that he had opened seals of the bottles and then examined its strength. In that statement, he nowhere stated that seals were tempered with in any manner. His later version therefore could not be accepted. It has not been proved by any evidence whatsoever that bottles were opened in the shop by the appellant or by someone else at his instance or with his connivance or with his knowledge. It has also not been proved that something was mixed therewith in the shop. It has also not been proved that strength of the liquor was lesser than prescribed which could have been ascertained only by chemical examination of the liquor which admittedly has not been done. While the case of the respondent was that it was Shri S.N.Bhargava who conducted the checking and found that water was mixed in the liquor thereby reducing its strength but the respondents have not examined the said Mr. S.N.Bhargava as a witness in the inquiry. Therefore adverse inference should be drawn against them. Even, the "fards" which were prepared do not contain signatures of Shri S.N. Bhargava.

The inquiry was conducted in violation of Section 4(3) of the Rules of 1957. Neither any list of witnesses nor list of documents were supplied to the appellant. The disciplinary authority in passing the order has not applied its mind to go through the record of the inquiry inasmuch as the order is also not speaking one. In this order, the disciplinary authority has not considered the arguments/points raised by the appellant in reply to show cause notice including on the question of the quantum of punishment. It has therefore been argued that the order of penalty even on merits of the case is liable to be set aside.

Both the appeal and the writ petition have been contested by the respondent mill in which they have been represented by different Advocates.

Mr.Mansih Shishodia, learned counsel for the respondent mill in appeal no. 741996 argued that the Act of 1958 was enacted with a view to consolidating and amending the law relating to regulation of conditions of work and employment in shops and commercial establishments. While Section 2(3) defines the term "commercial establishment", Section 2(17) defines the term "shop". Section 3 of the Act provides for exemption to certain category of

establishments from the operation of the Act of 1958 including to the offices of or under any State Government. Respondent no. 1 namely Ganganagar Sugar Mills Ltd. being a government company within the meaning of Section 456 of the Companies Act, is owned by the State of Rajasthan inasmuch as 97% of its total capital which represents almost its total share holding is owned by the government and Directors on its Board of Directors are also appointed by the Government of Rajasthan. The Managing Director of the respondent company is a senior I.A.S. officer while its Executive Director is a senior R.A.S. officer. Both of them holds their office at the pleasure of the government which exercise a deep and pervasive control over the functioning of the company.It was argued that the respondent company has various units for manufacturing of sugar and liquor and it also has a glass factory. Sale of liquor is transacted through various government shops wherein shop manager and shop keepers are directly appointed by the company. They are therefore government servants and not private individuals. While referring to the judgment of the Hon'ble Supreme Court in C.V.Raman supra, Mr. Manish Shishodia argued that words "office of or under the government" have been elaborately considered by their Lordships. In the facts of that case, while examining somewhat similar controversy, their Lordships held the office of Bank of India

was a government company and establishment under the Central Government and was, therefore exempted from the operation of the Tamilnadu Shops and Establishment Act. Reference was also made to a Division Bench judgment of this Court in Rajasthan State Industrial Development and Investment Corporation Ltd., Jaipur & two ors. vs. The Authority under the Rajasthan Shops and Commercial Establishment Act, 1958 & Anr., 1992(1) R.L.W. p.249 in which this Court while following the ratio of the judgment in C.V.Raman supra, held that RIICO being a government company was exempt from the operation of the Act of 1958. In the aforesaid case, the facts were also similar. An employee of RIICO was working in one of its shop and his services were terminated. He preferred an application u/s 28-A of the Act of 1958 before the Prescribed Authority. In those facts, it was held by this Court that the provisions of the Act of 1958 by virtue of exemption clause contained in Section 3 thereof would not apply to the said case. It was argued that the word "offices" contained in Section 3 is included in the definition "shop" itself as provided in Section 2(17) supra. However the word "offices" has not been separately defined in the Act and therefore the exemption clause contained in Section 3 shall apply to the respondent company as a whole. Any other interpretation, according to Mr. Manish Shishodia, would lead to

absurd consequences in that while the registered office of the company at Jaipur shall not be amenable to the Act of 1958 and its shops again at Jaipur would attract the provisions of the Act of 1958 and what is more, its factory would be exempted. Section 3 of the Act of 1958 contemplates an exemption for the entire company and not just a part of it. It has been argued that while interpreting provisions of a particular enactment, effort has to be made for harmonious construction of various provisions of such enactment and in doing so, entire Act has to be seen. Interpretation cannot be assigned to a single word in a particular provision of the Act in isolation of the entire text of that provision including other provisions in the Act. Such provision cannot be interpreted out of context while being oblivious of the object sought to be achieved by the Act. The respondent company has submitted to all government controls with regard to statutory compliances i.e. provisions of the Boiler's Act, the Factory's Act, the Payment of Wages Act and the Industrial Disputes Act were binding on it. It was argued that legislature could not have thought of providing additional control over the government company by enacting yet another Act in a field which was already occupied by various other enactments. He therefore argued that the judgment passed by the learned Single Judge is perfectly legal and the appeal preferred against them is

liable to be rejected.

Mr. Vijay Agarwal representing the respondent company in writ petition no.610/89 argued that the order of penalty passed by the disciplinary authority was based on the findings of inquiry officer. The inquiry officer has found the charges proved against the petitioner and charges were serious and grave in nature. The petitioner was posted as incharge of the shop and had the responsibility to keep a check on the sales, prevent adulteration etc. and deposit sales proceeds, empty bottles, gunny bags etc.. Reference has been made to the duty chart of the shop incharge, contained in the order dated 25.11.1978(Annex. R/2). While it has been admitted that the shop remained open for 13-14 hours , the contention of the respondent is that the petitioner's duty hours were confined to just 8 hours and it was within those hours when he was required to daily check/supervise and keep vigilance on the stock , sale, account and safety of the liquor. It has been submitted that liquor bottles used to be received duly sealed from the distillery and were to be sold in same condition. If there was mixing of some water or adulteration with the liquor contained in the bottles thereby reducing its strength, the petitioner cannot escape his responsibility because, after all, he was incharge of the shop. It is submitted that

the bottles were skilfully tampered with. When Shri S.N.Bhargava and other members of the vigilance cell checked the liquor shop from time to time, every time they found irregularities and therefore the said Shri S.N. Bhargava had very poor opinion regarding the working of the appellant. In fact Mr. S.N.Bhargava had given in writing to the Manager of the respondent mill on 23.4.1979 regarding this but when no action was taken against him, the appellant felt encouraged and persisted in indulging himself with the mal practices. Reference has also been made to the letter dated 23.4.1979 in which Mr. S.N. Bhargava has suggested for placing the appellant under suspension in view of the gravity of the charges against him. As regards the shortage of Rs.92.66, it has been argued that Mr. M.L. Dabi checked the liquor shop near the railway station on 10.12.1978 in presence of the appellant and found a sum of Rs.92.66 short in the cash box. He therefore prepared a "fard" which bears the signature of the appellant also. On 8.1.1979, three and half bottles and two quarter bottles of country made liquor were found to be having lesser strength. When account of the shop was checked by Mr. M.L.Dabi, he found many other discrepancies and prepared "fard" on which also signature of the appellant was obtained. When Mr. M.L. Dabi checked the shop again on 14.2.1979 he found one bottle containing sub-standard liquor.

This time also the checking was done in presence of the appellant and he signed the inspection report also. When the appellant was asked to explain his conduct, he failed to give any satisfactory explanation but he had no explanation because he himself was responsible for the adulteration of the liquor by adding water. In fact when the appellant was incharge of the shop and if he had any doubt or belief that others were making adulteration, he should have brought this to the notice of the higher authorities. He did nothing and therefore it was clear that he was responsible for the mixing of the water. Thereafter when again on 26.4.1979 checking was made by Mr.M.L. Dabi alongwith one Roopdan, shortage of Rs.458.38 was found in cash. When 'fard" of this was prepared, signature of the petitioner was also obtained.

One Shri U.N.Mathur, retired District Judge was appointed as inquiry officer and subsequently Mr. M. L.Dabi, Dy.S.P. was appointed as departmental representative. Adulteration was made by removing the seals and putting them back. It was done in such a way that the seals may not appear to have been removed or refitted. In fact the appellant himself has earlier stated it was Shri Matadin, salesman who mixed water into bottles but the fact that he did not report this to any superior authority clearly indicates that he

himself was responsible for the mixing of the water. Most of the time Shri M.L.Dabi checked the shop and found sub-standard quality of liquor in presence of the appellant and the appellant had put signature on inspection report also. It was denied that standard of the liquor could be proved only by report of the chemical examiner. It was submitted that Shri S.N.Bhargava was head of the factory's vigilance cell and when Shri M.L.Dabi, who was his assistant has been examined, no prejudice was caused to the appellant by mere reason of the fact that Mr. S.N. Bhargava was not examined as a witness. Evidence of Mr. M.L.Dabi and further co-related evidences were sufficient enough to substantiate the finding of guilt against the appellant. Lastly, it was argued that when the appellant had chosen to avail of the remedy before the Prescribed Authority u/s 28-A of the Act, he could not be allowed to avail the remedy of writ petition filed belatedly on 13.1.1989 to challenge the order of removal dated 21/26th September, 1981 after enormous delay of eight years. It was submitted that the appellant ought to have first approached the Labour Court/Industrial Tribunal under the provisions of the Industrial Disputes Act, 1947. The writ petition in any case is not a proper remedy because several disputed questions of facts are involved which cannot be appropriately gone into and adjudicated upon in this extra ordinary remedy and only Labour

Court/Industrial Tribunal would have the mechanism of doing so where evidence can be recorded. It was therefore argued that the writ petition be dismissed.

In order to appreciate the controversy raised herein, it would be only befitting to reproduce the relevant provisions containing definition of the word "commercial establishment" and "shop" as also the provisions relating to exemption contained in Section 3 of the Act of 1958 which are as under :-

> Section 2(3)-"Commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, a hotel, a restaurant, boarding or eating houses, cafe or any other refereshment house, a theatre or any other place of public amusement or entertainment and includes every such establishment as the State Government may, by notification in the Official Gazette, declare to be a commercial establishment for the purposes of this Act."
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> Section 2(17)-"Shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store-rooms, godowns or ware-houses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefit provided for workers under the Factories Act, 1948."
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> Section 3-"Exemptions.-(1) Nothing in the Act shall apply to-
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> (a) offices or or under the Central or any State

Government or local authorities;
(b) offices of the Reserve Bank of India;
(c) establishment for the treatment or the care of the infirm, or the mentally unfit;
(d)persons whose work is inherently intermittent such as travellers or caretakers;
(e) fairs or bazars for sale of work for charitable or other purposes from which no private profit is derived; and
(f) libraries at which the business of lending books or periodicals is not carried on for purposes for gain other than that of making profit for charitable, philanthropie, religious or educational objects.

(2) The State Government may, by notification in the Official Gazette, exempt either permanently or for any specified period any establishment or class of establishments or person or class of persons, to which or to whom this Act applies, from all or any of its provisions, subject to such conditions as the State Government may deem fit."

What is to be examined is whether a different interpretation can be given to Section 3 of the Act of 1958. There are two Division Bench judgments of this Court in the case of RIICO, supra and another judgment in Anajanical Joseph vs. State of Rajasthan(D.B.Civil Writ Petition No.1260/89) decided at Jaipur Bench on 25th September, 1989 wherein similar question with regard to service dispute of the employees of RIICO and Vijaya Bank, a nationalised bank, respectively, was examined and it was held that those establishments would be exempt from the purview of the Act of 1958. We would not have in the ordinary course ventured to examine this issue in greater details but for some of the arguments

raised by Mr. M.Mridul which we find were not raised and therefore not decided in those cases especially in the context of the comparison between the language employed by the legislature in Section 3 of the Act of 1958 vis-a-vis the analogous provision in Tamilnadu Shops and Establishment Act. Section 4(1)(c) of the said Act was what which came up for consideration before the Hon'ble Supreme Court in C.V.Raman, supra. The said provision in so far as relevant to the controversy involved herein has been reproduced in para 6 of the said judgment, relevant part of which for the facility of reference is extracted hereunder:

> "6.....Sub-section(1)of Section 4 starts with the words "Nothing contained in this Act shall apply to-". Thereafter it contains clauses (a) to (f) which describe the persons and establishment who are exempted from the operation of the Act. Clauses © and (f) read as here under:-
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> "(c) establishments under the Central and State Governments, local authorities the Reserve Bank of India, a railway administration operating any railway as defined in Cl.(20) of Art.366 of the Constitution and cantonment authorities;
> (f) establishments which, not being factories within the meaning of the Factories Act, 1948, are in respect of matters dealt with in this Act, governed by a separate law for the time being in force in the State."

What was under examination before the Hon'ble Supreme Court in that case was whether the State Bank of India and the nationalised banks can be said to be establishments under

the Central Government as contemplated by clause (c) aforesaid. Their Lordships in para 7 of the judgment while examining the import and meaning of the word "under" with the help of various dictionaries noted that the word "under" may be used in Statutes in its literal sense as indicating the condition of inferiority or subservience or as meaning subject to or in conformity with, denoting curtailment or restriction of, but nevertheless agreement or congruity with, something else to which it is made applicable.

Their Lordships further took note of the preamble of the State Bank of India Act, 1955 as also the various provisions contained in the said Act. Their Lordships also considered the provisions of the Banking Companies(Acquisition and Transfer of Undertakings) Act, 1970 and thereupon observed in para 9 of the judgment as under :-

> "9.....xxx.....xxxx.....xxxxxx.....
> The general superintendence, direction and management of the affairs and business of a corresponding new bank are to vest in a Board of Directors and it is the Central Government which in consultation with the Reserve Bank has been given the power under sub-sec.(3) to constitute the first Board of Directors consisting of not more than seven persons to be appointed by the Central Government. The proviso to the said sub-section authorises the Central Government if it is of opinion that it is necessary in the interests of the corresponding new bank so to do to remove a

> person froim the membership of the first Board of Directors and appoint any other person in his place. The proviso to sub-sec.(5) to S.7 contemplates that the Central Government may if the Chairman of an existing bank declines to become or to continue the function as a Custodian of the corresponding new bank or it is of opinion that it is necessary in the interests of corresponding new bank, so to do, appoint any other pe3rson as the Custodian of a corresponding new bank and the Custodian so appointed shall receive such emoluments as the Central Government may specify in this behalf. According to sub-sec.(6) thereof the Custodian is to hold office during the pleasure of the Central Government. S.8 on the other hand contemplates that every corresponding new bank shall in the discharge of its functions be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the Governor of the Reserve Bank give. Sub-sec.(1) of S.9 of this Act confers power on the Central Government to make a scheme for carrying out the provisions of this Act after consultation with the Reserve Bank."

In latter part of the aforesaid para 9 of the judgment, the Hon'ble Supreme Court also noted that every corresponding bank has to make a report to the Central Government upon the entire balance sheet and accounts and further the said bank has to furnish the Central Government its annual balance sheet, profit and loss account and the auditor's report and a report by its Board of Directors and activities of the bank. Having thus considered the scheme of the aforesaid two enactments, the Hon'ble Supreme Court concluded that a conspectus of these provisions with the meanings of the term "under" referred to above leaves no manner

of doubt that the State Bank of India and the nationalised banks are clearly establishments under the Central Government. What would be the meaning of the word "under" in contra-distinction to the word "of", the Hon'ble Supreme Court in para 11 of the said judgment held as under :-

> "It is obvious that the word "under" cannot be taken to have the same meaning as word "of" which may bring in the notion of ownership. Had that been the intention of the Legislature we find no cogent reason as to why the word "of" was not used in place of the word "under" in the relevant sub-section. Indeed the concept of "under" can be relevant only when there are two entities one of which may be under the other. A department of the Government strictly speaking is a part of the Government and can only loosely be termed as under the Government. Consequently the mere fact that the State Bank of India and the nationalised banks are different entities as corporate bodies for certain purposes cannot by itself be a circumstance from which it may be deduced that they cannot be establishment under the Central Government."

As to some of the earlier judgments on which reliance was placed by the High Court of Madras on the question of "state" as envisaged in Article 12 of the Constitution, their Lordships held that "it cannot be gainsaid that the salient principles which have been laid down in those cases with regard to the authorities having a corporate structure and exercising autonomy in certain spheres will certainly be useful for determining as to whether the State Bank of India and the nationalised banks are establishments under the

Central Government" and further held that "even though the State Bank of India and the nationalised banks may not be owned as such by the Central Government and its employees may not be the employees of the Central Government they certainly will fall within the purview of the expression "under the Central Government", in view of the existence of deep and pervasive control of the Central Government over these banks".

Notwithstanding the difference in the pattern of draftsmanship between the exemption provision contained in Section 3 of the Act of 1958 and Section 4(1)(c) of the Tamilnadu Shops and Establishments Act, the meaning that they convey would remain the same and therefore result into similar interpretation as we shall explain hereinafter.

While Section 3 of the Act of 1958 provides that "nothing in this Act shall apply to offices of or under the Central or any State Government or local authorities, Section 4(1)(c) of the Tamilnadu Shops and Establishments Act similarly provides that nothing contained in the said Act shall apply to the establishments under the Central and State Government, local authorities etc. While complete text of Section 4 of the Tamilnadu Shops and

Establishments Act has not been reproduced in aforesaid judgment of the Supreme Court and therefore not available for our perusal but it appears that in earlier clauses (a) and (b), offices of the Central or the State Governments or the local authorities were separately exempted whereas in clause (a) of Section 3(1) of the Act of 1958, such two clauses have been combined into one by use of both the phraseologies namely "of" and "under" in one single clause (a) rather than covering them separately in two clauses.

On the facts of the case, there should be no doubt that the State of Rajasthan has got all pervasive control over the respondent mill inasmuch as it owns 97% of its share holding and therefore possesses exclusive power to nominate the members of its Board of Directors and appoint its Managing Director and Executive Director. In fact, the officer of the Indian Administrative Service is appointed as Managing Director of the respondent mill by the State Government and that of the Rajasthan Administrative Service as its Executive Director.

The Division Bench of this Court in Anjanical Joseph, supra on consideration of clauses (a) and (b) of Section 3(1) as also the definition clauses of the words "commercial establishment" and

"shop" held as under :-

> "The question that arises for consideration having regard to the aforesaid definitions is as to whether the word `offices' used in Sec.3(1)(a) and (b) signify commercial establishment or shop or not or whether offices can be said to be establishment or not. Having regard to the definition of the expression `commercial establishment' and `shop' it is abundantly clear that the expression `offices' is an expression which will include `commercial establishment' as well as `shops' and as such it would be establishment within the meaning of Clause (7) of Sec.2. Thus the absence of expression `establishment' from clause (a) and (b) of sub-sec.(1) of Sec.3 would be of no consequence, in view of the definition of the expressions `commercial establishment' and `shop' in clause (3) and (17) of Sec.2 of the Act. The expression `offices' used in clause (a) and (b) of sub-sec.(1) of Sec.3 thus would cover commercial establishment as well as shops. In view of the decision in C.V.Raman Vs. Management of Bank of India(supra), this controversy is set at rest that the State Bank of India and nationalised banks are establishments under the Shops and Commercial Establishments Acts of the various states and as such are exempted from the provisions of the said Acts."

This judgment was reiterated in another Division Bench judgment in RIICO, supra in para 10 of which it was held as under :-

> "In the present case as well, the argument is that the RSIDI Corporation was a body, although incorporated under the Act but because of the control of the State Government in matters of administration, by supplying all funds and other methods, it was covered by the exemption clause under S.3(1) of the Act."

In the light of the aforesaid discussion, especially in view of what has been discussed above with reference to the judgment of the Hon'ble Supreme Court in C.V.Raman supra, we have to see whether "shop" owned and run by the respondent mill would not be covered by the provisions contained in Section 3(1)(a) of the Act of 1958. The argument of Mr. M.Mridul, learned counsel for the appellant is that "commercial establishment" has been separately defined in Section 2(7) of the Act and carries a different meaning than the word "shop" as defined in Section 2(17), which stands independently by itself. According to him, the definition of "shop" in its latter part speaks of a "commercial establishment" or a "shop" attached to factory where the person employed in the shop are allowed the benefits provided for workers under the Factories Act. Mr. M. Mridul would like us to hold that since the word "commercial establishment" as used in Section 2(3) has been preceded by the word "a", it does not mean that all and every commercial establishment would be excluded from the purview of the Act of 1958.

Section 2(17) has defined "shop" to mean any premises where any trade or business is carried out and /or where services are rendered to customers and includes offices, store-rooms,

godowns or warehouses whether in the same premises or otherwise, used in connection with such trade or business. In latter part of the definition however exclusion has been made of the "commercial establishment" and the "shop" which are attached to a factory where the persons employed in the shop are allowed the benefit provided for the workers under the Factories Act. "Commercial establishment" has been separately defined in Section 2(3) to mean a commercial or trade or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work etc. and includes every such establishment as the State Government may, by notification in the Official Gazette, declare to be a commercial establishment for the purposes of the Act. There can be no manner of doubt that shop in question run by the respondent mill is a shop wherefrom trade or business is carried on and at the same time it would also be a "commercial establishment". Even if the phraseology "commercial establishment" is preceded by the word "a" in the definition clause of "shop" contained in Section 2(17) for the purpose of the Act of 1958, it would nonetheless be a "commercial establishment" as has been separately defined in Section 2(3) of the Act. The core question that needs to be answered therefore is whether the "shop" in question considering either a "commercial establishment" or a

"shop" attached to a factory or independently as a shop by itself, would qualify the provision of exemption contained in Section 3(1) (a) where the words used are "offices of or under the Central or under the State Government". The definition of the word "shop" as given in Section 2(17) is an inclusive definition which defines the word "shop" to mean where any trade or business is carried on or where services are rendered to customers and includes offices, store rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but at the same time, excluding "commercial establishment" or a "shop" attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948. The latter part of the definition has made exclusion of "commercial establishment" or "shop" attached to a factory where the persons employed therein are allowed the benefits provided for workers under the Factories Act and that exclusion appears to have been purposely made so that such workers are not deprived of more favourable benefits available to them under the Factories Act. What therefore becomes evident is that even if the shop in question is not taken as a "commercial establishment" or a "shop" attached to a factory run by the respondent mill, it would nonetheless be a shop covered by the earlier part of the definition clause which defines a

shop to mean "where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or ware-houses, whether in the same premises or otherwise, used in connection with trade or business." A critical analysis of this definition clause would thus show that a shop run from any premises would also include offices used in connection with such trade or business whether situated in the same premises or otherwise. Although, it is trite law that an exemption clause in any provision of an enactment has to be construed strictly but at the same time, it is also settled proposition of law that while interpreting provisions of an enactment, regard must be had not only to the other provisions contained in the enactment but also to the object and the purpose which the Act seeks to achieve. In doing so, the courts have to harmonise various provisions of the enactment in such a way so as to make the Act workable consistent with the mischief it seeks to suppress and the object it intends to achieve.

Analyzing the well known principle of the harmonious construction, the Hon'ble Supreme Court in British Airways Plc. vs. Union of India & Ors., (2002)2 S.C.C. p.95 observed in para 8 as under :-

> "8. While interpreting a statute the court should try to sustain its validity and give such meaning to the

> provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect should be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."

Their Lordships of the Hon'ble Supreme Court in Union of India vs. Elphinstone Spinning and Weaving Co.Ltd. and Ors., (2001) 4 S.C.C. p.139 in para 17 of the judgment observed as under:-

> "17.....xxxx.....xxxxx.....xxxx.....xxxx.....
> When the question arises as to the meaning of a certain provision in a statute it is not only legitimate but proper to read that provision in its context. The context means the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy."

In State of Gujarat vs. Salimbhai Abdulgaffar Shaikh, (2003) 8 S.C.C.p.50 while interpreting the provisions of the Prevention of Terrorism Act, 2002 their Lordships of the Hon'ble

Supreme Court had the following observations to make in regard to the principle of interpretation of statute:-

> "12.....xxxxxx.....xxxxxx It is a well-settled principle that the intention of the legislature must be found by reading the statute as a whole. Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute. It is also the duty of the court to find out the true intention of the legislature and to ascertain the purpose of the statute and give full meaning to the same. The different provisions in the statute should not be interpreted in the abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express.....xxxxxx.....xxxxxx..."

Similarly, the Constitutional Bench of the Hon'ble Supreme Court in the Gujarat Assembly Election Matter, (2002) 8 S.C.C. p.237 observed that in providing the key to the meaning of any word or expression the context in which it is said has significance. The words used in the statute cannot be read in isolation and have to take their colour and content from the context in which they are used. It would be profitable to quote in extenso para 136 of the said judgment as under :-

> "136. In providing key to the meaning of any word or expression the context in which it is said has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. It is a settled principle that in interpreting the statute the words used therein cannot be read in isolation. Their colour and content are

> derived from their context and, therefore, every word in a statute must be examined in its context by the word "context". It means in its widest sense as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in para materia and the mischief which the statute intended to remedy. While making such interpretation the roots of the past, the foliage of the present and the seeds of the future cannot be lost sight of. Judicial interpretation should not be imprisoned in verbalism and words lose their thrust when read in vacuo. Context would quite often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the Legislature in using it. A word is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greately in colour and content according to the circumstances and the time in which the same is used as was observed by Holmes,J. In Towne v. Eisner (245 US 418, 425)."

The courts have to make a contextual interpretation of the provisions in a given enactment especially the one relating to exemption. What therefore appears from Section 3(1)(a) of the Act is that when the legislature intended to exclude the offices under the State Government from the purview of the Act of 1958, the office of the respondent mill was therefore entitled to exemption from the purview of the Act of 1958 and such offices whether or not situated in the same premises wherefrom the shop in question was being run nonetheless were offices used in connection with such trade or business which was carried on from the shop in question. This was so because trade and the business was the activity which was

carried on from the shop where services were rendered to the customers as envisaged in Section 2(17) of the Act of 1958. If the argument of the appellant in the present case were to be upheld, it would result into absurd consequences in that while the offices of the respondent mill would be exempt from the purview of the Act of 1958, but the shop run by it would not be exempt and therefore for one part of its establishment, the Act of 1958 would apply and for the other part, it would not. An interpretation which leads to such absurd consequence and incongruous results should always be avoided especially when it would result into frustrating the very object of providing exemption clause contained in Section 3 of the Act of 1958.

The Hon'ble Supreme Court in Bhatia International vs. Bulk Trading S.A. & Anr., (2002)4 S.C.C. p.105 while interpreting the provisions of Arbitration and Conciliation Act, 1996 held that where there is scope of two possible constructions, a reasonable and common sense approach deserves to be adopted rather than preferring a construction that would lead to absurd results. Their Lordships in para 15 of the judgment observed as under:-

> "15.....xxxxx.....xxxxxxx.....xxxxxx.....
> If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the

legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the court's duty to expound arises with a caution that the court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the courts would adopt, particularly in areas such as, constitutional adjudication dealing with social and defuse rights. Courts are therefore, held as "finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing"(see Corocraft Ltd. v. Pan American Airways, All ER at p.1071 D, WLR at p.732, State of Haryana v. Sampuran Singh,AIR at p.1957). If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."

Similarly, the Hon'ble Supreme Court in Shashikant Singh vs. Tarkeshwar Singh & Anr, (2002)5 S.C.C. p.738 while

elaborating upon the same principle of the law relating to interpretation of statutes observed in para 12 of the said judgment as under:-

> "12. .....xxxxx.....xxxxx.....
> The construction to be placed on a provision like this has to commend to justice and reason. It has to be a reasonable construction to promote the ends of justice. The words "could be tried together with the accused" in Section 319(1) cannot be said to be capable of only one construction. If it was so, approach to be adopted would be different since the intention of Parliament is to be respected despite the consequences of interpretation. There is, however, a scope for two possible constructions. That being the position, a reasonable and common sense approach deserves to be adopted and preferred rather than a construction that would lead to absurd results of Respondent 1 escaping the trial despite passing of an order against him on the court's satisfaction under Section 319(1) and despite the fact that the proceedings against him have to commence afresh....."

In the light of discussion that we have made with regard to interpretation of Section 3 of the Act, the impugned judgment of the learned Single Judge in our view does not suffer from any legal infirmity. The appeal therefore deserves to be dismissed.

Adverting now to the writ petition, we must observe that in the ordinary course, the writ petition filed in the year 1989

challenging the validity of the order of removal passed way back on 21/26th September, 1981 would have been liable to be rejected on the ground of delay and latches but in the peculiar facts of the case, we find that the appellant has been non-suited in the remedy before the Prescribed Authority under the Act of 1958. What is more, the matter was twice remanded by this Court at the instance of the respondents and when the respondents approached this Court yet again on third occasion, this third writ petition was dismissed. The Prescribed Authority by its order dated 17.2.1988 then allowed the application of the appellant giving rise to the writ petition in which the principal argument of the respondent was with regard to non-maintainability of the application before the . It was by taking clue from this objection that the appellant filed the present writ petition by way of abundant caution so that if the writ petition of the respondents succeeded on the objection of maintainability, he could seek his remedy in the writ petition.

Chief argument of Mr. M. Mridul , learned Senior Advocate in assailing the validity of the order dated 21/26.9.1981 is that there were large number of persons working in the shop and that appellant was working in that shop in only supervisory capacity.

He had to go out of the shop for long durations. Sale proceeds were received by the salesman and therefore shortage of the money on certain dates when the checking was made by the vigilance cannot be attributed to the appellant alone. Mr. M.Mridul argued that even if liquor in certain bottles subjected to test check was found to be of lesser strength, this charge also cannot be taken to have been proved against the appellant alone just because it could not be proved against same other employee. Essence of the argument is that the charges against the appellant have not been proved pointedly by direct evidence that it was he who pocketed the money found short and further that it was he who opened the bottles and adulterated the same by mixing water therewith. Apart from this, the other argument that has been made is that the appellant was not allowed to produce Matadin and inspect cash book of the shop. We have also gone through the memorandum of writ petition and what we find from perusal thereof is that most of the arguments raised in assailing the validity of the termination order pertain to sufficiency and adequacy of the evidence. It is argued that Shri S.N.Bhargava who made checking of the shop was also not produced in evidence which has prejudiced the case of the appellant. Even if what has been argued is accepted that the appellant merely had the supervisory duty still the fact remains that

he was incharge of the shop and on record we find that when on as many as seven occasions, the checking was done by the vigilance party, the liquor was found to have been adulterated by mixing water therewith on four occasions namely on 8.1.1979, 7.2.1979, 12.4.1979 and 31.4.1979 whereas cash was found short on at least two occasions namely on 10.12.1978 and 26.4.1979. The inquiry in the present case was conducted by one Shri U.N. Mathur, a retired judicial officer, who has conducted the disciplinary proceedings in an impartial and independent manner so much so that when the respondents failed to produce Shri S.N. Bhargava, Incharge of Vigilance Cell as a witness, charge no. 2 against the appellant was found not proved. The 'fard' Ex.P/3 was prepared when the checking was made on 10.12.1978 regarding cash shortage of Rs.92.66 and the signature of the appellant was also taken on it. Similarly, 'fards' Exs.P/4, P/6, P/7 and P/8 prepared to record reduction in the strength caused as a result of mixing of water with liquor also contained the signature of the appellant. The explanation given by the appellant with regard to the shortage of the cash was that currency notes were sent to the bank for collection has not been found to be acceptable by the enquiry officer and/or disciplinary authority. As regards non-production of Matadin, no efforts are shown to have been made by the appellant to produce him as a

witness although the case of the respondent was that he being merely a daily wage employee was removed after the incident of adulteration with the liquor surfaced. A perusal of Annexure R/2 dated 25.11.1978 clearly show as to what duties the appellant was required to perform. This order was issued in regard to the duty chart of the Incharge of the shops of the country made liquor run by the respondents. This required them to remain present from 9 a.m. to 11 a.m. in the morning and to deposit the cash received during that period between 11 a.m. to 12 noon and furnish the statement of sale and thereafter again remain present from 6 p.m. to 10 p.m. in the night. It also directed that the incharge of the shops would ensure that there were no empty bottles and half bottles in the shop and if during investigation any such empty bottles were found, it shall be assumed that such empty bottles were misused for the purpose of mixing water with the liquor. This clearly show that mal-practice of the mixing water with the liquor was rampant and was fully known to the management.

It is trite law that this Court in exercise of its powers of judicial review can interfere in a disciplinary matter only when it finds that the findings recorded by the enquiry officer and/or disciplinary authority are based on no evidence and there are no

materials to support the conclusions so arrived at or if the material on the basis with such conclusion has been reached was such that no reasonable or prudent man on that basis could have arrived at such conclusion. The Hon'ble Supreme Court in Govt. of A.P. & Ors. vs. Mohd. Nasrullah Khan, (2006) 2 SCC p.373 while considering the very same question observed in para 11 as under :-

> "11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority."

Their Lordships of the Hon'ble Supreme Court in Indian Oil Corporation Ltd. & Anr. vs. Ashok Kumar Arora, (1997) 3 S.C.C. p.72 while considering the scope of interference by the High Court in cases relating to departmental enquiries observed in para 20 as under:-

> "20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally

disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic viz. State of A.P. vs. S.Sree Rama Rao, (1964) 3 SCR 25, State of A.P. vs. Chitra Venkata Rao, (1975) 2 SCC 557, Corpn. Of the City of Nagpur v. Ramchandra, (1981) 2 SCC 714 and Nelson Motis v. Union of India, (1992) 4 SCC 711."

The very same view was reiterated by their Lordships in Principal Secretary, Govt. of A.P. & Anr. vs. M.Adinarayana, (2004) 12 SCC p.579 in para 24 and 25 as under:-

"24. The order of the Administrative Tribunal interfering with the well-considered order of TDP is unwarranted. APAT cannot sit as a court of appeal over a decision based on the finding of the enquiry authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supported the conclusion reached by the disciplinary authority, it is not the function of APAT to review the same and reach a different conclusion. So, it is well settled that if the findings recorded by the tribunals or of the disciplinary authorities, are found to be perverse, which are not based on the legal evidence, then the Administrative Tribunal or the court is empowered to treat such flaw as a legal flaw and quash the impugned action. In the instant case, the fact-finding authority has based its findings on legally permissible substantive evidence. And, therefore, such a finding on fact based on substantive evidence is not permissible to be interfered with.

25.In our opinion, the Administrative Tribunal cannot ignore the findings of the disciplinary authority or the tribunals. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. The

> finding of the court or tribunal under judicial review which, in our opinion, cannot extend to the re-examination of all evidence to decide the correctness of the charge. In our view, the Administrative Tribunal cannot sit as a court of appeal over a decision based on finding of the enquiry authority in disciplinary proceedings. This Court, time and again, categorically stated that Court should not interfere with the quantum of punishment where there is some relevant material which the disciplinary authority has accepted and which material has reasonable support, the conclusion reached by the Disciplinary Tribunal, it is not the function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority."

In our considered view, this Court cannot in exercise of its power of judicial review under Article 226 of the Constitution of India interfere with the order of disciplinary authority, when on the facts of the present case, it is found that there was ample evidence on which finding recorded by the Inquiry Officer and upheld by the disciplinary authority can be based. This Court in exercise of its power of judicial review under Article 226 of the Constitution cannot re-evaluate such evidence and supporting material to test correctness of the findings so recorded as if it were a remedy of appeal. The charges against the appellant were proved by substantive evidence and the evidence on record reasonably support the conclusion reached by the disciplinary authority. The impugned order of removal therefore does not suffer from any illegality.

In view of what has been discussed above, the special appeal and the writ petition are both dismissed. In the facts of the case, we leave the parties to bear their own costs.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-